

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
FINAL UTILITY ORDERS
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September 15, 2005

In the Matter of

DOCKET NO. UT-041127

THE JOINT PETITION FOR
ENFORCEMENT OF
INTERCONNECTION
AGREEMENTS WITH VERIZON
NORTHWEST, INC.

ORDER NO. 05

ORDER DENYING VERIZON'S MOTION
TO DEFER RULING; GRANTING AT&T'S
MOTION TO WITHDRAW; GRANTING,
IN PART, AND DENYING, IN PART,
VERIZON'S PETITION FOR
RECONSIDERATION

The Commission will grant a party's motion to withdraw from a multi-party proceeding if the withdrawal will not affect the status of the proceeding, affect the Commission's ability to enter a decision, or prejudice any other party to the proceeding. ¶ 26; WAC 480-07-345.

In considering whether to grant a motion to defer ruling, the Commission will evaluate whether all parties agree to defer ruling, and whether the benefits to the party seeking delay outweigh the prejudice or undue delay to any party with a legitimate expectation, the dispute will be resolved. ¶ 27; WAC 480-07-375; RCW 80.01.040.

Replies to answers filed with the Commission are not appropriate under WAC 480-07-370(1)(d) unless the Commission authorizes or requests the filing of replies. ¶ 28; WAC 480-07-370.

With reference to switches, the Commission interprets the term “upgrade” to include both replacement and additional deployment. ¶ 38; WAC 480-07-650; Telecom Act, §§ 251, 252.

An ILEC is not obligated to provide access to narrowband or voice-grade service through a packet switch, or obligated to continue access to circuit switching when deploying a packet switch. ¶ 38; *Telecom Act*, §§ 251, 252.

Federal law governing unbundled access to packet switches controls in determining Verizon’s obligations to provide unbundled access to local switching and whether discontinuing unbundled access to local switching was “required” under its interconnection agreements when Verizon upgraded the circuit switch to a packet switch. ¶¶ 48-50; *Telecom Act*, §§ 251, 252.

Whether there are material issues of fact in dispute is central to a determination of a motion for summary judgment. ¶ 59; WAC 480-07-380.

Where an issue of fact is not a material to the decision, the Commission need not reach that issue in resolving a motion for summary judgment. ¶ 59; WAC 480-07-380.

A claim of unconstitutional taking under the Fifth and Fourteenth Amendments of the US Constitution cannot be sustained when a carrier receives reasonable compensation from competitive carriers through established rates, which the US Supreme Court has found to be sufficient compensation. ¶ 63; *US Constitution Fifth Amendment; Fourteenth Amendment*.

When the Commission reverses portions of an Order which are argued to constitute a “taking” under the US Constitution, the “taking” claim is unsupported and should be denied. *US Constitution Fifth Amendment; Fourteenth Amendment*.

September 22, 2005

In the Matter of the Petition for Arbitration of an Amendment to Interconnection Agreements of

VERIZON NORTHWEST, INC.

With

COMPETITIVE LOCAL EXCHANGE CARRIERS AND COMMERCIAL MOBILE RADIO SERVICE PROVIDERS IN WASHINGTON

Pursuant to 47 U.S.C. Section 252(b) and the Triennial Review Order

DOCKET NO. UT-043013

ORDER NO. 18

COMMISSION’S FINAL ORDER GRANTING, IN PART, AND DENYING, IN PART, VERIZON’S PETITION FOR REVIEW; DENYING AT&T’S PETITION FOR REVIEW; AFFIRMING, IN PART, AND MODIFYING, IN PART, ARBITRATOR’S REPORT AND DECISION

An incumbent local exchange carrier may assess a disconnection charge already approved by the Commission when a

competitive carrier disconnects an unbundled network element (UNE). The reason for the disconnection, whether due to a customer's decision to disconnect or the Federal Communications Commission's (FCC's) decisions on unbundling, does not matter. ¶ 23; *Telecom Act*, § 252.

Terms and conditions should be included in specific provisions of a proposed amendment to an interconnection agreement, not in the definitions of terms in the amendment. ¶ 32; *Telecom Act*, § 252.

The Commission will address and resolve all issues properly before it as identified in petitions for arbitration and responses to petitions. ¶53; *Telecom Act*, § 252.

By adopting new rules in the Triennial Review Order governing line splitting, and re-adopting and clarifying rules governing line conditioning, maintenance, testing and repair of copper loops and subloops, the FCC resolved an existing controversy between ILECs and CLECs, resulting in a change of law requiring amendment of interconnection agreements. ¶ 54; *Telecom Act*, § 252.

The Commission will interpret and apply rules adopted by the FCC when necessary to resolve interconnection agreement disputes. ¶¶ 54, 70, 76, 88; *Telecom Act*, § 252.